

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

SENKA TAJIC,	)	CASE NO. C07-0614-JLR
	)	
Plaintiff,	)	
	)	
v.	)	
	)	REPORT AND RECOMMENDATION
MICHAEL J. ASTRUE,	)	RE: SOCIAL SECURITY
Commissioner of Social Security,	)	DISABILITY APPEAL
	)	
Defendant.	)	
_____	)	

Plaintiff Senka Tajic proceeds through counsel in her appeal of a final decision of the Commissioner of the Social Security Administration (Commissioner). The Commissioner discontinued plaintiff's Disability Insurance (DI) and Supplemental Security Income (SSI) benefits after a hearing before an Administrative Law Judge (ALJ). Having considered the ALJ's decision, the administrative record (AR), and all memoranda of record, it is recommended that this matter be REMANDED for further administrative proceedings.

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REPORT AND RECOMMENDATION  
RE: SOCIAL SECURITY DISABILITY APPEAL  
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**FACTS AND PROCEDURAL HISTORY**

Plaintiff was born on XXXX, 1962.<sup>1</sup> She obtained a bachelor's degree in sociology and worked as a high school teacher in Bosnia and/or Croatia. (AR 101, 105.) Plaintiff came to the United States as a refugee and completed a master's degree in teaching, but did not obtain a teaching certificate. (*Id.*) She previously worked in this country as a day care teacher and caregiver for her mother. (*Id.* and AR 91-92.)

On July 22, 1999, plaintiff was found to be disabled as of March 1, 1999 and entitled to SSI benefits due to her severe depressed mood and psychotic thought process. (AR 19, 30.) Although an April 2002 application for DI benefits was initially denied, plaintiff subsequently attained disability insurance status through her continued work and earned income as a caregiver. (AR 88-95.)

On October 8, 2003, the Social Security Administration (SSA) determined that plaintiff's impairments had improved, that her condition was stable with counseling and medication, and that she was capable of work activity beginning October 1, 2003. (AR 28, 30-33.) Plaintiff sought reconsideration and the decision terminating her benefits was upheld. (AR 29, 39-50.)

Plaintiff timely sought a hearing and appeared before ALJ Marguerite Schellentrager on March 15, 2006. (AR 680-720.) Vocational expert Michael Swanson also appeared at the hearing. On May 19, 2006, ALJ Schellentrager issued a decision finding plaintiff not disabled. (AR 19-27.)

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<sup>1</sup> Plaintiff's date of birth is redacted back to the year of birth in accordance with the General Order of the Court regarding Public Access to Electronic Case Files, pursuant to the official policy on privacy adopted by the Judicial Conference of the United States.

01 Plaintiff timely appealed to the Appeals Council, which denied review (AR 13-16), making  
02 the ALJ's decision the final decision of the Commissioner. Plaintiff appealed this final decision  
03 of the Commissioner to this Court.

04 **JURISDICTION**

05 The Court has jurisdiction to review the ALJ's decision pursuant to 42 U.S.C. § 405(g).

06 **DISCUSSION**

07 In determining whether a claimant's disability benefits should be terminated, Social  
08 Security regulations outline an eight-step evaluation process for a DI claim and a seven-step  
09 evaluation process for a SSI claim. 20 C.F.R. §§ 404.1594(f), 416.994(b)(5). Step one for the DI  
10 claim asks whether the claimant is engaging in substantial gainful activity (SGA).

11 § 404.1594(f)(1). SGA is not considered in evaluating the SSI claim. Step two for the DI claim  
12 and step one for the SSI claim asks whether a claimant's impairments meet or equal the criteria  
13 for a listed impairment. §§ 404.1594(f)(2), 416.994(b)(5)(i). If the criteria is met, disability  
14 continues; if not, the analysis proceeds to the next step.

15 At step three for the DI claim and step two for the SSI claim, it must be determined  
16 whether medical improvement has occurred. §§ 404.1594(f)(3), 416.994(b)(5)(ii). If medical  
17 improvement has occurred, the analysis proceeds to the fourth step for the DI claim and the third  
18 step for the SSI claim. If there has been no medical improvement, the analysis proceeds to the  
19 fifth step for the DI claim and the fourth step for the SSI claim.

20 Step four for the DI claim and step three for the SSI claim look to whether medical  
21 improvement is related to the ability to work. §§ 404.1594(f)(4), 416.994(b)(5)(iii). If found  
22 related, the analysis proceeds to the sixth step for the DI claim and the fifth step for the SSI claim.

01 At step five for the DI claim and step four for the SSI claim, two groups of exceptions to  
02 medical improvement are considered. §§ 404.1594(f)(5), 416.994(b)(5)(iv). If no exceptions  
03 apply, disability continues. If one of the first group of exceptions apply, the analysis proceeds to  
04 the next step. If one of the second group of exceptions applies, the claimant's disability is found  
05 to have ended.

06 The severity of the combination of the claimant's impairments is considered at step six for  
07 the DI claim and step five for the SSI claim. §§ 404.1594(f)(6), 416.994(b)(5)(v). If the  
08 combination of impairments do not significantly limit the ability to perform basic work activities,  
09 the claimant is no longer deemed disabled. If the claimant remains significantly limited, the  
10 analysis proceeds to the next step.

11 At step seven for the DI claim and step six for the SSI claim, the Commissioner must  
12 assess residual functional capacity (RFC) and determine whether the claimant has demonstrated  
13 an inability to perform past relevant work. §§ 404.1594(f)(7), 416.994(b)(5)(vi). Finally, if the  
14 claimant cannot perform past relevant work, the Commissioner bears the burden at step eight for  
15 the DI claim and step seven for the SSI claim of demonstrating that the claimant can perform other  
16 work. §§ 404.1594(f)(8), 416.994(b)(5)(vii).

17 In this case, the ALJ found that plaintiff did not engage in SGA through October 1, 2003,  
18 the date the Commissioner deemed her disability to have ended. The ALJ further found that  
19 plaintiff did not develop any additional impairments and did not have any impairment or  
20 combination of impairments that met or equaled the criteria for a listed impairment.<sup>2</sup> The ALJ

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22 <sup>2</sup> Plaintiff was previously deemed to have mental impairments meeting the criteria for  
listing 12.06 (anxiety-related disorders) of 20 C.F.R. Part 404, Subpart P, Appx. 1.

01 determined that medical improvement occurred as of October 1, 2003 and that the improvement  
02 was related to plaintiff's ability to work because, as of that date, she no longer had impairments  
03 which met or equaled a listing. The ALJ concluded that, as of October 1, 2003, plaintiff's  
04 impairments in combination were not severe in that they did not cause more than a minimal impact  
05 on plaintiff's ability to perform basic work activities, and that plaintiff's disability ended as of that  
06 date. Because the ALJ deemed plaintiff not disabled at step six for the DI claim and step five for  
07 the SSI claim, she did not proceed to the final steps of the analyses.

08 This Court's review of the ALJ's decision is limited to whether the decision is in  
09 accordance with the law and the findings supported by substantial evidence in the record as a  
10 whole. *See Penny v. Sullivan*, 2 F.3d 953, 956 (9th Cir. 1993). Substantial evidence means more  
11 than a scintilla, but less than a preponderance; it means such relevant evidence as a reasonable  
12 mind might accept as adequate to support a conclusion. *Magallanes v. Bowen*, 881 F.2d 747, 750  
13 (9th Cir. 1989). If there is more than one rational interpretation, one of which supports the ALJ's  
14 decision, the Court must uphold that decision. *Thomas v. Barnhart*, 278 F.3d 947, 954 (9th Cir.  
15 2002).

16 Plaintiff argues that the ALJ erred in rejecting the opinions of two treating physicians and  
17 improperly failed to find her mental impairments severe.<sup>3</sup> She requests remand for an award of  
18 benefits or, alternatively, for further administrative proceedings. The Commissioner argues that

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20 <sup>3</sup> Plaintiff argued in her opening brief that the ALJ erred in ignoring the opinions of non-  
21 examining physician Gerald Peterson. However, in reply, plaintiff concedes that the ALJ  
22 considered and rejected the opinions of Dr. Peterson. Plaintiff states her belief, without further  
discussion, that the ALJ's rejection of Dr. Peterson's opinions was unwarranted. Because there  
is no substantive argument related to the opinions of Dr. Peterson, this assertion is not addressed  
herein.

01 the decision is supported by substantial evidence and should be affirmed.

02       The Court has discretion to remand for further proceedings or to award benefits. *See*  
03 *Marcia v. Sullivan*, 900 F.2d 172, 176 (9th Cir. 1990). The Court may direct an award of benefits  
04 where “the record has been fully developed and further administrative proceedings would serve  
05 no useful purpose.” *McCartey v. Massanari* 298 F.3d 1072, 1076 (9th Cir. 2002).

06       Such a circumstance arises when: (1) the ALJ has failed to provide legally sufficient  
07 reasons for rejecting the claimant’s evidence; (2) there are no outstanding issues that  
08 must be resolved before a determination of disability can be made; and (3) it is clear  
from the record that the ALJ would be required to find the claimant disabled if he  
considered the claimant’s evidence.

09 *Id.* at 1076-77. For the reasons described below, the Court finds that further administrative  
10 proceedings would serve a useful purpose.

#### 11                                   Physicians’ Opinions

12       In general, more weight should be given to the opinion of a treating physician than to a  
13 non-treating physician, and more weight to the opinion of an examining physician than to a non-  
14 examining physician. *Lester v. Chater*, 81 F.3d 821, 830 (9th Cir. 1996). Where not contradicted  
15 by another physician, a treating or examining physician’s opinion may be rejected only for “clear  
16 and convincing” reasons. *Id.* (quoting *Baxter v. Sullivan*, 923 F.2d 1391, 1396 (9th Cir. 1991)).  
17 Where contradicted, a treating or examining physician’s opinion may not be rejected without  
18 “specific and legitimate reasons’ supported by substantial evidence in the record for so doing.”  
19 *Id.* at 830-31 (quoting *Murray v. Heckler*, 722 F.2d 499, 502 (9th Cir. 1983)).

#### 20       A.     Dr. Steven Haney

21       Plaintiff first challenges the ALJ’s assessment of the opinions of her treating physician Dr.  
22 Steven Haney. In considering Dr. Haney’s opinions, the ALJ found as follows:

01 Regarding the claimant's mental health impairments (which were the basis of her  
02 disability in 1999), it is clear that the claimant's symptoms and functioning have  
03 improved greatly with medication. In October of 2003, the claimant's psychiatrist,  
04 Steven T. Haney, M.D., noted that the claimant's medications were very helpful in  
05 maintaining her stability. At that visit, the claimant was alert and neutral, with normal  
06 psychomotor activity, with only mildly depressed mood. She was tearful when she  
07 explained that she had lost a student-teacher position. But her thoughts were  
08 organized and linear, her mood stable.

09 My conclusion that the claimant has no "severe" mental health impairments is  
10 inconsistent with Dr. Haney's opinion from August of 2004 that the claimant was  
11 disabled. He cited stress as the reason for two decompensations that required  
12 "hospitalization," but acknowledged that the claimant had stabilized once she resumed  
13 her medications. I find only two psychiatric incidents in the record that involved a trip  
14 to the emergency room. Both occurred in January of 2004, when the claimant  
15 presented to the emergency room for increased anxiety. Although the claimant  
16 claimed both times to be compliant with her medications, her son reported to Dr.  
17 Haney that the claimant had refused her medication the morning of the first  
18 emergency room visit. And once there, the claimant refused Ativan. On both  
19 occasions, the claimant was found to be non-detainable.

20 It appears clear that claimant is stable, when she takes her medications. Dr. Haney  
21 also cited difficulty with interpersonal functioning, explaining that the claimant had  
22 failed two student teaching trials. I note that the claimant was attempting to teach in  
high school, a task at which many likely would not succeed. I do not find such a so-  
called failure sufficient to establish a continued severe mental health impairment,  
especially in someone who successfully obtained an advanced degree as the claimant  
did.

(AR 24; internal citations to record omitted.)

Plaintiff notes that Dr. Haney qualified his August 2004 statement that plaintiff was stable  
following the resumption of her medications in subsequently stating: "However, I have great  
concerns that the stress of competitive work at any level would cause destabilization." (AR 422.)  
She also notes that Dr. Haney reflected in the January 16, 2004 report that her son indicated in  
full: "*Tin thinks she has been taking her medication* although she refused to take her medication  
this morning." (AR 562; emphasis added.) Plaintiff posits that because this report was dated on

01 a Friday and reflected that plaintiff had “been decompensating since Wednesday[,]” it would  
02 appear that she had been decompensating for two days before she skipped her medication. (AR  
03 561.) Plaintiff notes Dr. Haney’s assessment on the report: “She has decompensated while taking  
04 medication.” (AR 562.) She argues that it is significant that her reported failure to take  
05 medication and her refusal of Ativan occurred on the same day, during a severe psychotic  
06 episode.<sup>4</sup> Plaintiff argues, therefore, that the ALJ’s reliance on her alleged non-compliance with  
07 her medication regimen is not supported by substantial evidence.

08 Plaintiff also rejects the ALJ’s criticisms as they relate to her failed attempts at student  
09 teaching and the fact that she obtained an advanced degree in teaching. She notes that the ALJ  
10 ignores the fact that she previously taught high school successfully in Croatia. (AR 105, 711.)  
11 Plaintiff also points to her testimony that she was able to complete her degree with the use of “lots  
12 of medications” and “regular consultations with doctors, family doctor and psychiatrists” (AR  
13 690-91) and the fact that she ultimately failed to earn her teaching certificate (AR 688-89). She  
14 also points to Dr. Haney’s opinion as to her “poor stress tolerance” and “great difficulty in  
15 interpersonal functioning” (AR 422) as issues that would be far more important in teaching high  
16 school students than in attending school.

17 Plaintiff adds that the ALJ failed to address other evidence from Dr. Haney. (*See, e.g.*, AR  
18 548, 550, 552 & 554 (Dr. Haney opined in April, May, July and August 2004 that, although  
19 “relatively stable[,]” plaintiff had “very poor stress tolerance.”); AR 556 (March 19, 2004: “[I]t  
20 should duly be noted that Senka has great difficulty with stress and whether or not she is going

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22 <sup>4</sup> A review of the record reveals that plaintiff refused Ativan on January 15, 2004 and that  
her son reported that she refused to take her medication on January 16, 2004. (AR 483, 562.)

01 to be able to navigate the stress of school remains to be seen. She has difficulty with interpersonal  
02 interactions, particularly with irritability. She has gotten sick a number of times in the past in  
03 response to stress and she truly doesn't function well when sick. I've encouraged her to reapply  
04 for disability on the basis of her poor stress tolerance because as much as she wants to be normal  
05 and function in the normal world, I'm not encouraged that she is going to be able to do so."); AR  
06 557-58 (March 5, 2004: plaintiff reported problems with mood instability and irritability and Dr.  
07 Haney opined: "She is hypomanic and not functioning well at all."); AR 561-62 (January 2004:  
08 reflecting "periods of intense anxiety[,] and delusions, and episodes of decompensation "while  
09 taking medication."), AR 572 (April 2003: "She is relatively stable but she would have poor stress  
10 tolerance.")) Plaintiff asserts that the ALJ did not address Dr. Haney's repeated opinion as to her  
11 low stress tolerance.

12 Finally, plaintiff contends that the ALJ overlooked the side effects of her medications,  
13 including drowsiness, fatigue, and slow cognitive and psychomotor functioning. (AR 553-56  
14 (April 16, 2004 report from Dr. Haney).) She notes her testimony at the hearing as to some of  
15 these symptoms. (AR 700.)

16 The Commissioner asserts that Dr. Haney's conclusion that plaintiff decompensated while  
17 taking her medication is not supported by the record. (*See, e.g.*, AR 422 (noting in August 13,  
18 2004 letter that plaintiff was "taking her medication again and is stable in regards to her  
19 symptoms.")) He argues that the ALJ need not have separately addressed each sentence in Dr.  
20 Haney's August 16, 2004 letter, including his speculation that the stress of employment would  
21 cause destabilization. Also, with respect to stress tolerance, the Commissioner notes that Dr.  
22 Haney's reports also indicated that plaintiff was relatively stable or doing better and failed to

01 provide examples of what Dr. Haney relied on in opining as to plaintiff's allegedly low stress  
02 tolerance. The Commissioner also points to plaintiff's testimony, as acknowledged by the ALJ  
03 earlier in the decision (AR 22), that she was able to earn her master's degree due to her  
04 intelligence, education, and upbringing (AR 690-91).

05 The Court concludes that the ALJ should have contacted Dr. Haney for clarification of his  
06 opinion that plaintiff destabilized while taking medication. An ALJ has an obligation to recontact  
07 a treating physician or psychologist when the evidence received is inadequate for a determination  
08 of disability. *See* 20 C.F.R. §§ 404.1512(e), 416.912(e) ("When the evidence we receive from  
09 your treating physician or psychologist or other medical source is inadequate for us to determine  
10 whether you are disabled, we will need additional information to reach a determination or a  
11 decision.") "Ambiguous evidence, or the ALJ's own finding that the record is inadequate to allow  
12 for proper evaluation of the evidence, triggers the ALJ's duty to 'conduct an appropriate inquiry.'" *Tonapetyan v. Halter*, 242 F.3d 1144, 1150 (9th Cir. 2001) (quoted source omitted).

14 In this case, two separate documents from the first destabilization in January 2004 reflect  
15 the report of medication compliance. (*See* AR 491 (January 16, 2004 emergency room document:  
16 "Sts she is taking meds.");<sup>5</sup> AR 610 (January 16, 2004 on-call report to mental health center:  
17 "Reports medication compliance.")) As argued by plaintiff, the record reflects that she had begun  
18 to destabilize prior to her son's report that she had refused medication. The fact that she refused  
19 medication, including the offer of Ativan at the hospital, in the midst of a psychotic episode does  
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21 <sup>5</sup> The documentation from plaintiff's first January 2004 destabilization includes a report  
22 from Valley Medical Center dated January 15, 2006 and reports from Harborview Medical Center  
dated January 15, 2004 and January 16, 2004. (AR 483-99.)

not seem at all unusual or indicative of prior non-compliance with her medication regimen. Additionally, a report from plaintiff's January 22, 2004 emergency visit reflects her continued decompensation while taking medication:

According to son, she continues to be decompensated, agitated, restless, pacing all the time, keeping the family up at night as she is unable to sleep and walks around at night. The family is afraid of her unpredictable anger as she has a labile affect. She is taking her medications but only because the son supervises her taking the meds and directs her to do so. Today, in the session, Senka appeared preoccupied, with labile affect. She became angry at something I said and walked out of the session and paced outside my office.

(AR 608.) If anything, the evidence largely supports Dr. Haney's conclusion that plaintiff destabilized while taking her medication. However, to the extent the ALJ found the evidence ambiguous, he should have contacted Dr. Haney for clarification.

The ALJ also insufficiently addressed the issue of plaintiff's stress tolerance. The Commissioner's arguments on this issue are largely post hoc rationalizations. The ALJ mentioned stress only once in her discussion of Dr. Haney's opinions, stating that Dr. Haney "cited stress as the reason for" plaintiff's two decompensations. (AR 24.) As noted by plaintiff, although acknowledging she was back on medication and stable, Dr. Haney opined that he nonetheless had "great concerns that the stress of competitive work at any level would cause destabilization." (AR 422.) This is consistent with his repeated findings that, although relatively stable, plaintiff had low stress tolerance. Additionally, although plaintiff's ability to function at a high level is supported by the completion of her master's degree, the issue of her stress tolerance is perhaps more directly relevant to her ability to perform basic work activities, as demonstrated by her inability to succeed at student teaching and, consequently, to obtain her teaching certificate.

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01 However, even if it may be said that the ALJ erred in his assessment of the opinions of Dr.  
02 Haney, it does not necessarily follow that his opinions should be credited as true. *Compare*  
03 *Lester*, 81 F.3d at 830-34 (“Where the Commissioner fails to provide adequate reasons for  
04 rejecting the opinion of a treating or examining physician, [the Court credits] that opinion as ‘a  
05 matter of law.’”; finding that, if doctors’ opinions and plaintiff’s testimony were credited as true,  
06 plaintiff’s condition met a listing) (quoting *Hammock v. Bowen*, 879 F.2d 498, 502 (9th Cir.  
07 1989)), with *Connett v. Barnhart*, 340 F.3d 871, 876 (9th Cir. 2003) (courts retain flexibility in  
08 applying the “‘crediting as true’ theory.”; remanding for further determinations where there were  
09 insufficient findings as to whether plaintiff’s testimony should be credited as true). In this case,  
10 the ALJ did not proceed to the steps of the analysis which would address plaintiff’s ability to  
11 perform either her past relevant work or other types of work. Accordingly, further proceedings  
12 may serve a useful purpose. For this reason, the Court should direct the ALJ to contact Dr. Haney  
13 for clarification of his opinions, reassess those opinions and the medical record, and proceed to  
14 the remaining steps of the DI and SSI analyses.

15 B. Dr. Finkelstein

16 Plaintiff also challenges the ALJ’s assessment of the opinions of treating physician Claudia  
17 Finkelstein. The ALJ rendered the following assessment of the opinions of Dr. Finkelstein:

18 In January of 2006, the claimant presented to a new doctor, Claudia A. Finkelstein,  
19 M.D. The claimant’s self-report about her mental health symptoms was more or less  
20 stable. The following month, this new physician opined that the claimant was still  
21 disabled from her mental health symptoms and fibromyalgia. I decline to give  
22 significant weight to this opinion, however, for the following reasons. First, the  
doctor’s letter did not address the claimant’s educational achievements or the fact that  
the State recognized that she was capable of being a caretaker for her elderly and ill  
mother. Second, to support her opinion, the doctor cited “recurrent hospitalizations  
for odd behavior.” I note that Dr. Finkelstein failed to state when these

01 hospitalizations occurred. The issue in this case is not whether the claimant was ever  
02 disabled from her symptoms, but rather whether she experienced medical  
03 improvement by October 1, 2003. The evidence from that time only mentions two  
04 emergency room visits in January of 2004, approximately two weeks apart, and no  
05 psychiatric admissions. Both times the claimant was found not to be detainable. As  
06 noted above, there is a strong implication that the claimant was not taking her  
07 medications before these visits. I also note that Dr. Finkelstein expressed her opinion  
08 after treating the claimant for less than one month. I find that the medical evidence  
09 of record, when viewed as a whole shows that the claimant's impairments had  
10 dramatically improved by October 1, 2003 and remained improved when the claimant  
11 was on her medication. For that reason I find Dr. Finkelstein's opinion to be  
12 inconsistent with the evidence and decline to give it much weight. See 20 C.F.R. §§  
13 404.1527(d)(4), 416.927(d)(4) (explaining that the more consistent an opinion is with  
14 the record as a whole, the more weight it is given).

09 (AR 25; emphasis in original and internal citations to record omitted.)

10 Plaintiff rejects the ALJ's reasoning as it relates to her educational achievements for the  
11 same reasons as discussed above with respect to Dr. Haney. She also rejects the ALJ's reliance  
12 on her part-time work as a caregiver, noting that she earned less than \$500.00 per month while  
13 serving in that role. *See Grant v. Social Sec. Admin.*, 17 F. Supp. 2d 975, 985 (D. Neb. 1998)  
14 ("While the ALJ was entitled to have the vocational expert fully consider Grant's mowing work,  
15 at the same time the ALJ was not entitled to have the expert ignore Grant's undisputed symptoms  
16 of organic mood disorder and depression.") and 20 C.F.R. § 404.1572 (defining SGA). Plaintiff  
17 further argues that, in addition to citing her recurrent hospitalizations, Dr. Finkelstein noted that  
18 she spent "long periods of time really paralyzed, not moving, and having difficulty getting her tasks  
19 of daily living done[,] and had "recent worsening of her depression[,] as well as fibromyalgia  
20 pain. (AR 651.) Additionally, plaintiff again challenges the ALJ's assertions as to her alleged non-  
21 compliance with her medication regimen and asserts that the evidence reflects that she was  
22 hospitalized on at least one of the occasions in which she went to the emergency room in January

01 2004. (*See* AR 422 (Dr. Haney's August 13, 2004 letter states: "She had to be hospitalized at  
02 Valley Hospital in Renton and at Harborview at that time.") and AR 562 (Dr. Haney's January 16,  
03 2004 report states: "She will be hospitalized and seen once she is discharged."))

04 The Commissioner reiterates the ALJ's findings and offers several different arguments in  
05 opposition to those offered by plaintiff. (*See* Dkt. 24 at 8-11.) However, it can be said without  
06 examining each of those arguments that the ALJ's reasoning with respect to Dr. Finkelstein was  
07 deficient.

08 First, the ALJ inappropriately focused on Dr. Finkelstein's reference to recurrent  
09 hospitalizations to the exclusion of the remainder of the letter. Dr. Finkelstein stated:

10 She has had recurrent hospitalizations for odd behavior including screaming, walking  
11 into traffic, and socially isolating herself. At this point, I believe she is about as good  
12 as she gets but I believe she is still very disabled. She spends long periods of time  
13 really paralyzed, not moving, and having difficulty getting her tasks of daily living  
done. She has had recent worsening of her depression, does not seem to be having  
psychotic features at this point or current suicidal ideation but I think that she will  
require ongoing care.

14 (AR 651.) Reading the record as a whole, it is apparent that Dr. Finkelstein's reference to  
15 recurrent hospitalizations – including incidents in which she walked into traffic – considered  
16 plaintiff's entire history. (*See, e.g.*, AR 173-74 (August 1997 psychiatric discharge summary  
17 reflecting reports of plaintiff walking in traffic); AR 205 (December 1998 psychiatric discharge  
18 summary indicating hospitalization occurred upon "increasing disorganization and wandering in  
19 traffic.")) As asserted by plaintiff, the ALJ made no mention of Dr. Finkelstein's statements  
20 regarding plaintiff's current mental state.

21 Second, for the reasons discussed above, the ALJ erred either in determining that plaintiff  
22 had decompensated due to her failure to take her medications or in failing to seek further

01 information on this subject. As such, this reasoning for rejecting the opinions of Dr. Finkelstein  
02 is also problematic. Additionally, although it may be relevant that Dr. Finkelstein failed to address  
03 plaintiff's educational achievements or her care for her mother, the ALJ could have contacted Dr.  
04 Finkelstein for clarification of her opinions in light of those factors.

05 Finally, although Dr. Finkelstein may have been treating plaintiff for only a short period  
06 of time when she rendered her opinions in the February 24, 2006 letter, her opinions are consistent  
07 with plaintiff's long-term treating physician and the record as a whole. Additionally, while the ALJ  
08 described Dr. Finkelstein's treatment as spanning only a single month, it actually approached a  
09 two-month period at the time of her letter. (*See* AR 630 (initial record from Dr. Finkelstein dated  
10 January 9, 2006) and AR 651 (February 24, 2006 letter from Dr. Finkelstein).)

11 Because the record does not necessarily support an award of benefits, Dr. Finkelstein's  
12 opinions should not be credited as true. Instead, as with Dr. Haney, the ALJ should be directed  
13 to reassess the opinions of Dr. Finkelstein and, if necessary, to contact this treating physician for  
14 clarification of her opinions.

#### 15 Severity of Mental Impairments

16 "An impairment or combination of impairments is not severe if it does not significantly limit  
17 [a claimant's] physical or mental ability to do basic work activities." 20 C.F.R. §§ 404.1521,  
18 416.921 (as cited in §§ 404.1594(f)(6), 416.994(b)(5)(v)). "Basic work activities" refers to "the  
19 abilities and aptitudes necessary to do most jobs." 20 C.F.R. §§ 404.1521(b), 416.921(b). "An  
20 impairment or combination of impairments can be found 'not severe' only if the evidence  
21 establishes a slight abnormality that has 'no more than a minimal effect on an individual's ability  
22 to work.'" *Smolen v. Chater*, 80 F.3d 1273, 1290 (9th Cir. 1996) (quoting Social Security Ruling

(SSR) 85-28). This inquiry “is a de minimis screening device to dispose of groundless claims.” *Id.* (citing *Bowen*, 482 U.S. at 153-54). An ALJ is also required to consider the “combined effect” of an individual’s impairments in considering severity. *Id.*

In this case, in addition to the discussions related to plaintiff’s treating physicians, the ALJ stated:

I also note that the records are replete with evidence that she has not been compliant with her appointments, and she has not maintained contact with her mental health providers. At times she has refused to take her medications, and her symptoms worsened. But her providers have observed that when she took her medications, her mood improved.

I conclude that the claimant’s mental health impairments improved to a non-severe level. The doctors who continued to promote her disabled mental status relied in large part on the claimant’s self-report rather than her actual successful function.

(AR 25; internal citations to record omitted.)

As discussed above, the evidence does not appear to support the conclusion that plaintiff decompensated as a result of her failure to take medication. Further, while she was deemed stable for long periods by Dr. Haney, he nonetheless also found her to have a low threshold for stress. Consistent with this assessment and the record as a whole, the SSA concluded upon reconsideration that plaintiff had a severe mental impairment due to her “moderate limitations in her ability to interact with the public on a constant basis and [the fact that she] would do best in situations where she could work independently.” (AR 47, 49.)<sup>6</sup> Also, while the record does contain evidence that plaintiff missed appointments, it likewise reflects her attendance at numerous

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<sup>6</sup> This previous finding of the SSA is likewise consistent with the opinion of DSHS reviewing physician Gerald Peterson, who assessed a moderate limitation in plaintiff’s ability to maintain social functioning. (AR 365, 377.)

01 counseling sessions and medical appointments. ( *See generally* AR 534-624.) There is no  
02 suggestion from a medical provider that plaintiff was perceived as being non-compliant with her  
03 treatment. (*Id.*)

04 In sum, the Court does not find the ALJ's finding as to the non-severity of plaintiff's  
05 mental impairments to be supported by substantial evidence. The ALJ should be directed to  
06 reconsider the severity of plaintiff's mental impairments on remand.

07 **CONCLUSION**

08 For the reasons set forth above, this case should be REMANDED for further  
09 administrative proceedings. On remand, the ALJ should reassess plaintiff's claims, considering  
10 the deficiencies outlined in this Report and Recommendation. A proposed order accompanies  
11 this Report and Recommendation.

12 DATED this 9th day of January, 2008.

13   
14 Mary Alice Theiler  
15 United States Magistrate Judge  
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